

DECISION



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PR-II
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

B-195569

DATE: December 7, 1979

MATTER OF:

DL G 03467
Greenfield Tap & Die Division
of TRW, Inc.

D3467

DIGEST:

[Protest Alleging Agency Accepted previously Rejected Bid Samples]

1. Protest of negotiated award on basis that awardee's bid samples were rejected under initial advertised procurement and therefore could not be acceptable under same evaluation criteria is denied where record indicates new samples were submitted which agency found to be acceptable.
2. Determination and findings which recites that under prior IFB two bids were accompanied by unacceptable bid samples while third bidder's sample arrived late adequately justifies use of negotiation since under regulations all three bids were nonresponsive and regulations permit negotiation in such circumstances. Moreover, contracting officer had reasonable basis for determination that it was impractical to obtain competition given that there was only one potentially responsive bid received late in response to prior IFB.
3. Allegations of improprieties in prior advertised procurement which was canceled before award need not be considered since they do not relate to the award or proposed award of contract under subsequent solicitation.

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2 Greenfield Tap & Die Division of TRW, Inc. (Greenfield) protests the award of a contract for tap and die sets to American Kal Enterprises, Inc. (AKE) under Request for Proposals (RFP) FCTP-CU-98192-N-7-13-79, issued by the General Services Administration (GSA). 17

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GSA initially advertised for the requirement but canceled the invitation after opening because the two timely bids received were accompanied by unacceptable bid samples, rendering the bids nonresponsive, while a third bid, from Greenfield, was received late. GSA then initiated the negotiated procurement by sending a TWX request for offers subject to the same terms and conditions contained in the canceled invitation.

Greenfield objects to award to another firm because it assumes that the two firms whose product samples were rejected under the advertised procurement resubmitted the same samples which properly again would have to be rejected since there was no change in the evaluation criteria. Alternatively, the protester argues that if the evaluation criteria have changed, it should be permitted to submit a revised proposal.

We find no merit to this protest. GSA explains that the protester's assumption is incorrect and that the firms which had submitted nonresponsive bid samples under the advertised procurement have submitted new revised samples which comply with the specifications. The protester has not rebutted this explanation and the record provides no other support for the protester's position. Consequently, we cannot find that GSA is accepting noncomplying samples.

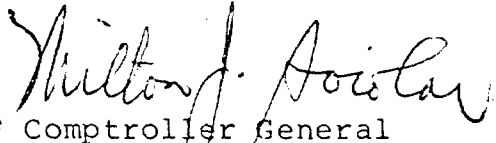
The protester, upon being furnished a copy of the contracting officer's determination and findings (D&F) justifying the use of negotiation procedures, also questioned the validity of using negotiation procedures here. The resolicitation was negotiated under Federal Procurement Regulations (FPR) 1-3.210, which provides for negotiating purchases and contracts if it is impracticable to secure competition by formal advertising, such as where bids have been solicited and no responsive bid has been received from a responsible bidder. FPR 1-3.210 (a)(3). The protester argues that this regulation is inapplicable because GSA's D&F "does not demonstrate that GSA failed to receive at least one responsive bid from a responsible bidder." We disagree. The D&F

recites that two bids received under the IFB were accompanied by unacceptable samples and that the bid sample from the third bidder was received late. Since both bids with unacceptable samples and bids which are late are nonresponsive, see FPR 1-2.301(a), we believe the D&F establishes that no responsive bid was received in response to the IFB. Moreover, since two of the bids were rejected because of nonconforming samples, thereby leaving only one likely competitor --the third bidder-- for another procurement, we believe the contracting officer had a reasonable basis for his determination that it would be impracticable to obtain competition through formal advertising.

The protester also raises a number of issues which concern alleged improprieties in GSA's conduct of the initial advertised procurement. Because the solicitation which the protester questions did not result in an award and the agency properly resolicited its requirements, this aspect of Greenfield's protest need not be considered as it does not relate to the validity of award or proposed award of a contract. Cf. Otis Elevator Company, B-195104, September 20, 1979, 79-2 CPD 206.

GSA does concede that it initially made an erroneous evaluation of samples submitted under the advertised procurement; however, this does not support the protester's speculative assumption that GSA has committed similar errors in the negotiated procurement. The fact that GSA has refused to permit the protester to examine the samples of other offerors does not suggest any wrongdoing on the part of GSA, but rather is appropriate conduct inasmuch as negotiations are still pending for a portion of the requirements.

The protest is denied.


For the Comptroller General
of the United States